

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, “Controlling Pollution,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to ensure that certain stationary sources of carbon dioxide (CO₂) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.

The U.S. Environmental Protection Agency (EPA) recently finalized regulations deferring for a three-year period the counting of CO₂ emissions from biogenic sources toward PSD and Title V applicability. EPA defines biogenic CO₂ emissions as emissions of CO₂ from a stationary source that directly result from the combustion or decomposition of biologically based materials other than fossil fuels and mineral sources of carbon. Biogenic emissions of CO₂ include fermentation processes at ethanol plants and combustion of biomass such as wood or other vegetative matter at power plants or industrial facilities.

During this three-year deferral period, EPA states that it “will conduct a detailed examination of the science associated with biogenic CO₂ emissions from stationary sources. This study will consider technical issues that [EPA] must resolve in order to account for biogenic CO₂ emissions in ways that are scientifically sound and also manageable in practice.” At the end of the deferral period, EPA either may decide to exempt CO₂ emissions from biogenic sources or may instead decide to include these emissions. If EPA decides to include CO₂ emissions from biogenic sources, it has indicated in the preamble to the federal regulations that it will not conduct a “look-back” at facilities that, during the deferral period, did not count CO₂ emissions from biogenic sources toward PSD applicability.

More information on EPA’s planned study, the signed, final amendments and fact sheet for the three-year deferral, and the background information on the federal regulations are available on EPA’s Web site at <http://www.epa.gov/NSR/actions.html#2011>. More information about the state rules for greenhouse gases (GHGs) is available on the Department’s Web site at <http://www.iowadnr.gov/InsideDNR/RegulatoryAir/GreenhouseGasEmissions/TailoringRule.aspx>.

If the Department does not proceed at this time, state rules for the PSD and Title V programs will be inconsistent with federal regulations, and will be more stringent than federal regulations, which is prohibited by state law (Iowa Code section 455B.133(4)).

The Department has seven permitting projects in-house that are potentially affected by this rule making. If biogenic emissions are not deferred, at least six of these projects would very likely need to go through PSD review for greenhouse gas emissions.

Item 1 amends rule 567—22.100(455B), the definitions for the Title V program.

Title V requires that an affected facility obtain a Title V operating permit. The Title V operating permit, which is renewed every five years, contains all air emission control requirements that apply to the facility, including the requirements established through construction permitting.

Specifically, Item 1 revises the definition of “subject to regulation.” The amendment to this definition is identical to the federal amendments (see 40 CFR 70.2, definition of “subject to regulation,” as amended on July 20, 2011). The amendment states that CO₂ emissions from biogenic sources (explained in the amendment) are deferred from counting toward Title V program applicability for a period of three years, until July 21, 2014.

Item 2 amends the introductory paragraph of rule 567—33.1(455B) to update the date of the new federal PSD amendments being implemented through this rule making.

Item 3 amends subrule 33.3(1), the definitions for the PSD program.

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control. The specific nature of the project determines whether it is subject to PSD requirements for GHGs.

Specifically, Item 3 amends the definition of “subject to regulation” for the PSD program. The definition includes the definition for “tpy CO₂ equivalent emissions (CO₂e).” The amendment to this definition is identical to the federal amendment for the Tailoring Rule (see 40 CFR 52.21(b)(49) as amended on July 20, 2011). The amendment states that CO₂ emissions from biogenic sources (explained in the amendment) are deferred from counting toward PSD program applicability for a period of three years, until July 21, 2014.

Because of the urgent need expressed by stakeholders to expedite this rule making, the Department is proposing that these amendments be Adopted and Filed Emergency After Notice so that they would become effective upon the date of filing with the Administrative Rules Coordinator. The amendments would confer a benefit or remove a restriction on a segment of the public, according to the provisions of Iowa Code section 17A.5(2)“b”(2). Under this schedule, the Department will accept comments following publication of this Notice of Intended Action through October 11, 2011. The Department plans to present the final amendments for adoption to the Environmental Protection Commission on November 15, 2011, which will allow the Department to file the Adopted and Filed Emergency After Notice rule making no later than November 16, 2011, at which time the amendments would become effective.

Any person may make written suggestions or comments on the proposed amendments on or before October 11, 2011. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by E-mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Tuesday, October 11, 2011, at 2 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on Tuesday, October 11, 2011.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154, or by E-mail at christine.paulson@dnr.iowa.gov to advise of any specific needs.

The jobs impact of this rule making cannot be determined. Insufficient information exists to determine what impact the proposed amendments will have on private sector jobs and employment opportunities in the state. The Department requested stakeholder input and did not receive any information regarding jobs impact in the state because of this rule making. However, the Department estimates that affected facilities will experience reduced regulatory burden as a result of this rule making because they will not be subject to the PSD or Title V programs during the deferral period. Therefore, facilities affected by this rule making should experience a positive impact on jobs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend rule **567—22.100(455B)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. The term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009) and summing the resultant value for each to compute a tpy CO₂e. For purposes of this definition, prior to

July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

ITEM 2. Amend rule 567—33.1(455B), introductory paragraph, as follows:

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through ~~November 29, 2005~~ July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567—22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

ITEM 3. Amend subrule **33.3(1)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009), ~~and~~. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO₂e.